

A
R E V I E W
OF THE
LAWS AND REGULATIONS
RESPECTING THE
DISTILLERY OF SCOTLAND;



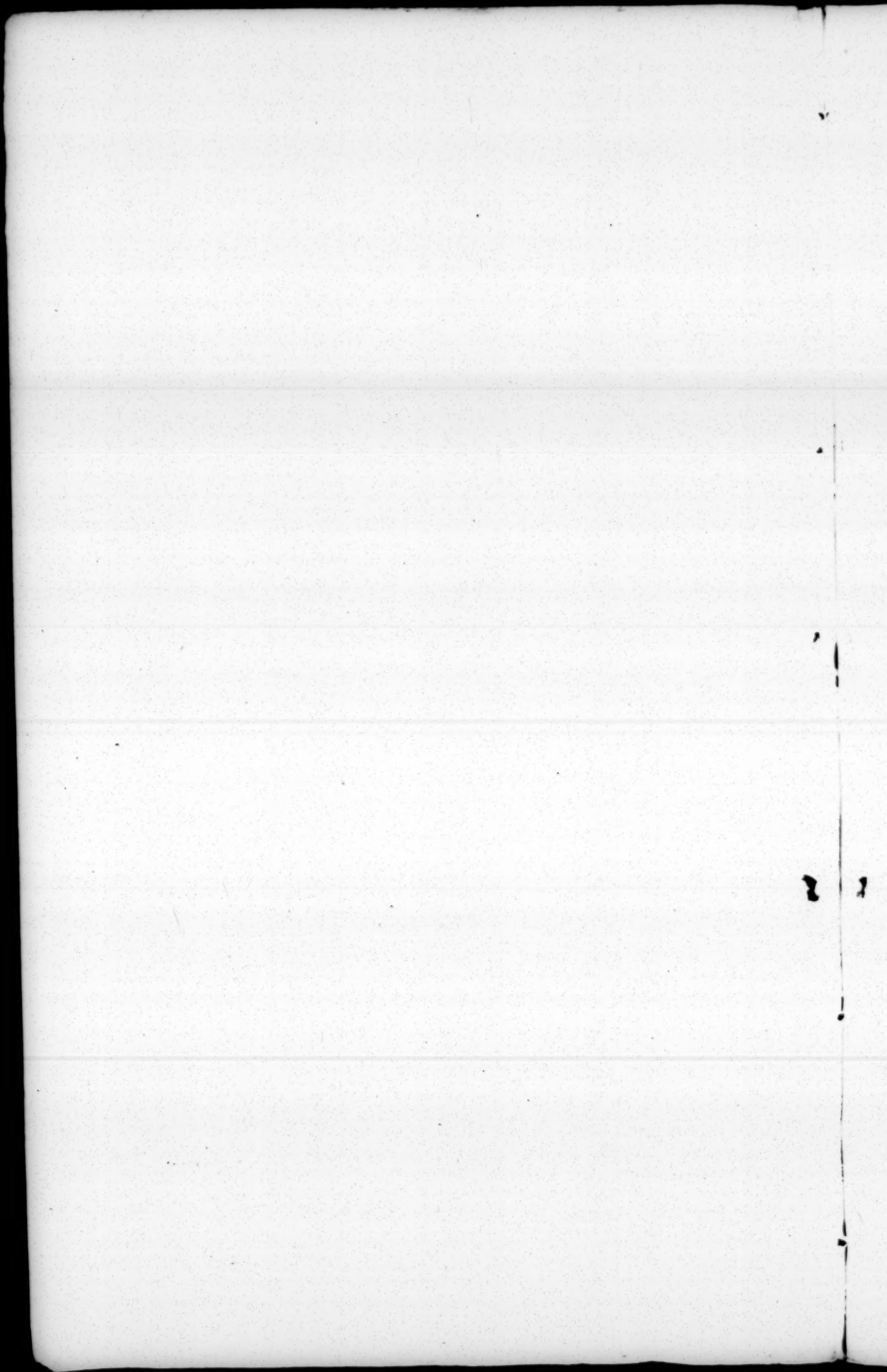
WITH
The Circumstances which gave rise to them
CONSIDERED UPON PRINCIPLE.

Nam tua res agitur, paries cum proximus ardet.

L O N D O N :

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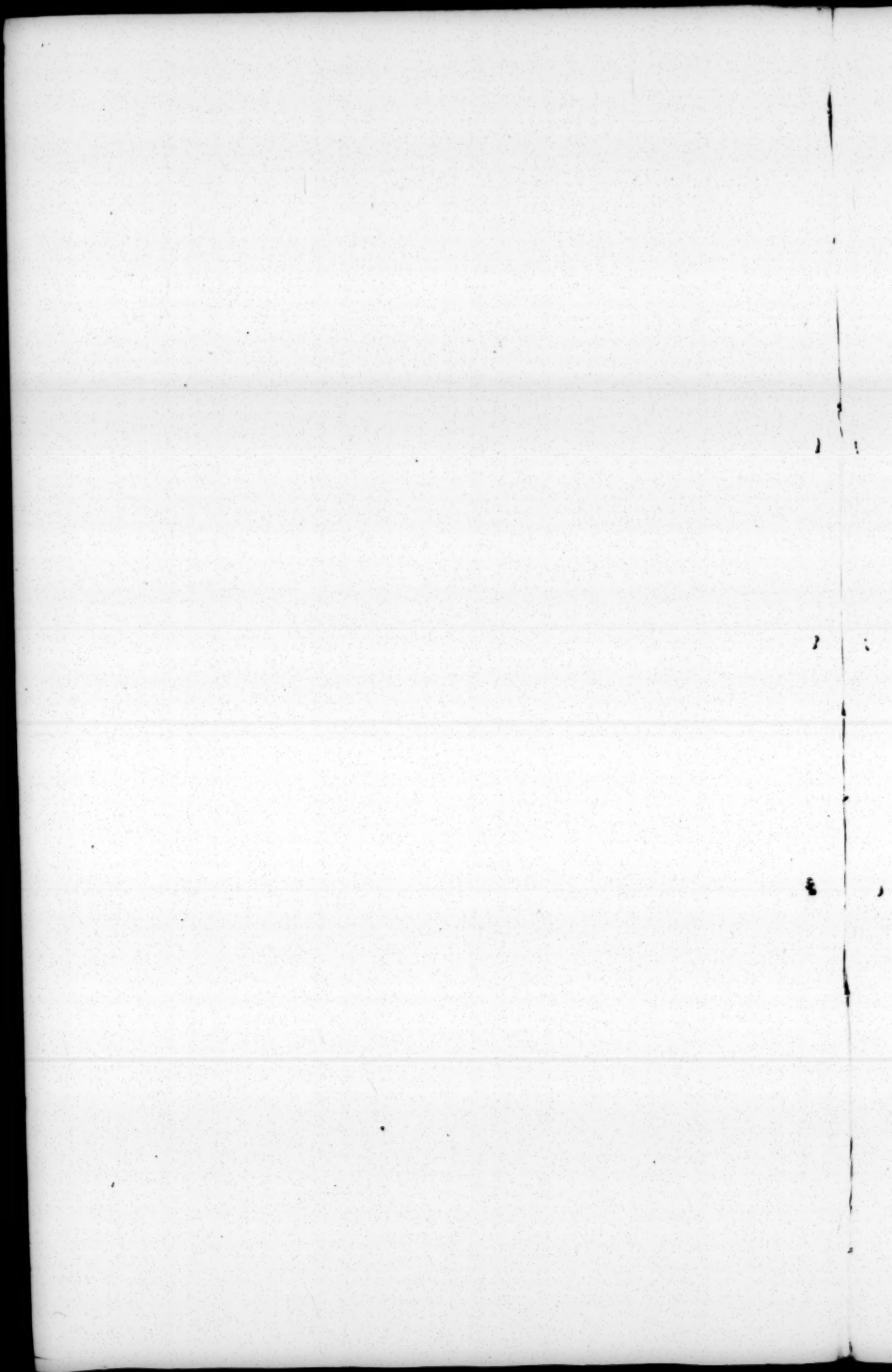


ADVERTISEMENT.

THE consequences of that distinction which has been introduced between England and Scotland, by the establishment of two different systems of *distillery law*, came lately under the consideration of a very respectable meeting, held at Edinburgh, of merchants, manufacturers, and others, who are creditors of the bankrupt distillers of Scotland:—the result was, a strong and unanimous resolution, followed by a circular letter to their representatives in parliament, stating, from the books of the distillers then before them, the losses which it appeared they had suffered under the present law, and their reasons for wishing that Scotland might have the benefit of one and the same system of law, for that manufactory, in common with England, to be executed in the same manner in both countries. One of these circular letters came into the hands of the author of the following paper, and induced him to consider the subject with some attention. It seemed strange to him that Scotland

should have to *solicit* a thing of this sort; and every inquiry tended to confirm the general ideas which had been started in his mind, and which he has now taken the liberty, with no improper intention at least, to lay before the public. As to the *facts*, some of them are notorious; and others are collected from various publications. His object has been, to try them shortly by the test of *principle*, and to expose prejudices which were at first founded in error, and afterwards precluded inquiry. The subject is far from inviting, but it is important: it involves in it considerations of great moment, not only to the particular interests of Scotland, but also to the honour and future peace of both countries. Whatever tends to establish very strong opposite interests, may give great scope to corrupt influence, and must introduce dissention. A general impression unluckily prevails in England, that Scotland perpetually aims at little temporary advantages. Nothing will so effectually remove such impressions as an open and steady vindication, upon all occasions, of her public rights; for then it will be acknowledged, that she looks higher than to the petty object of the hour, and is intitled to the confidence

dence of her neighbour. This sort of conduct alone will generate mutual respect, and suppress narrow jealousies: for until it is perfectly understood that both are governed by the same generous spirit of liberality and independence, the two countries will never in fact be united.



A

R E V I E W, &c.

THERE were circumstances which pointed out the distillery of corn spirits as a manufactory well suited to Scotland. A climate favourable to the process of distillation, labour and fuel cheap, and the incidental advantages of the business both promoting and promoted by the advancement of agriculture.

The manufactory has accordingly, in the course of a few years, been there carried on to a great extent, and the manufacturers most certainly have arrived at a very high degree of proficiency in their business. It is the prevailing opinion too, which has been infused into the public with much effect, that they have for years been evading duties to a vast amount.

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These

These circumstances combined, without taking into the account the supposed evasion of duties, ought to have produced wealth ; but at this moment the distillers of Scotland are bankrupts, and their creditors, to the amount of 360,000*l.* who trusted them while in the enjoyment of rights which they held under a special Act of Parliament, have now manufacturing houses and utensils to look to for payment.

The people in general are alarmed and depressed.—When undertakings of extent and enterprize in manufactures are mentioned, as objects of public protection and encouragement, they naturally talk of the distilleries.

The truth is, that the distillers of Scotland, have hardly known, for several years, under what laws they were working. Their *Board of Excise*, legislating upon every possible occasion, have checked and harassed the manufactory by regulations and practices, about which the statute-book could give no information*. The public law too, upon the subject, has been perpetually fluctuating, and the manufacturers working, sometimes upon one plan, sometimes

* Some instances will be given, in the sequel, to shew the general spirit which actuated these officers upon all occasions.

upon another, must, without doubt, have been subjected to great embarrassments. It is natural to suppose, therefore, that their exertions were rather pointed to the means of seizing, hastily, the precarious advantages of the moment, and of doing what they could under the law while it lasted, than to that steady uniform course of trade, which, if left to itself, might have secured to them a permanent establishment.

How did this happen? Certainly in consequence of the artifices employed by monopolists to ruin a rising trade, in a quarter of the kingdom where it was likely to prosper. These artifices were successfully directed to two different purposes—first, to the purpose of creating a general impression, that these northern manufacturers were daring and unprincipled smugglers, who never paid one penny of public duties; by which means their Board of Excise might be set on to distress them, and interrupt their operations.—And secondly, to the purpose of prevailing upon government to interfere in the competition as a thing of public concern, in which case it would be no difficult matter to crush their rivals, by means of misrepresentation and superior management.

The distillers of London are the great mo-
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nopolists

•opolists of this business, and it is curious to observe in passing, how they themselves were situated, while they formed the design of raising the cry against the trade from the north. They were in the very centre of their market, with no other check upon them, than the survey of officers, who, in general, had been too long, and too familiarly acquainted with the ground upon which they trode, to be very circumspect. The compounders and rectifiers, to whom they sold their spirits, lived at their door, and all their surplus quantities (if perchance they had any) were easily disposed of, without notice or observation.

In this convenient situation, they were to stand forth as the only distillers who paid duties ; and notwithstanding the various checks to which the traders from Scotland were exposed, in sending their spirits to England, they were to run down these traders, in the comparison with themselves, as profligate smugglers.

In executing this scheme, their conduct was sometimes ridiculous, but generally artful. They began with the mob, and used very dexterously that vilest of all vulgar weapons, *national prejudice*. The Scots, they said, would carry every thing before them ; they had got into

the market of London, which they had nothing to do with, and were driving out the former tenants in the most lawless manner. They addressed themselves, in a pamphlet*, chiefly composed upon this liberal subject, to one of the most respectable bodies of men in society, viz. the landed interest of England. The subject is happily introduced by the following philosophical fact, and spirited vindication of the rights of England: "It is a fact well known, that wherever the arts are in the least cultivated, and the earth produces fruits, the inhabitants extract spirit from some of them. England hath practised this art for ages, and *England hath an undoubted right to do so*, the lands producing a great variety of different fruits and grains, suited to this purpose."

This was altogether unanswerable.—

The establishment of an extensive distillery in Scotland is then described as a phenomenon of a very singular nature, "the *continual want of food*," and "*wretched starving condition of the inhabitants*," being considered.—This is followed by another passage, which points out,

* This pamphlet was published in the beginning of the year 1784, by Johnson, No. 72, St. Paul's Church-yard, and went through two editions.

in strong terms, the usurpation by Scotland of the same rights which had been before so clearly proved to be the property of England.—“ Scot-
 “ land,” says this pamphleteer, “ *hath no right* to
 “ be *favoured* with a trade perfectly *unnatural* in
 “ its principle, and that to the immediate *injury*
 “ *of the landed interest of England*, the maker of
 “ spirit in England, and the public revenue.
 “ Yet, according to the appearances of the pre-
 “ sent day, Scotland is likely to carry this point
 “ with *impunity*. Many circumstances, *connections*,
 “ and *interests* co-operate towards the accomplish-
 “ ment of her aim : nothing but the landed in-
 “ terest, *rousing with indignation*, can prevent it ;
 “ for all other persons and interests have given
 “ way, and continue to do so.”

It was a sagacious thing in this patriotic trades-
 man, to arouse the landholders and farmers
 against the purchasers of their grain *. If he had
 succeeded

* The Scotch distillers certainly purchased great quantities of English grain, mixing it with Scotch grain, of which they likewise purchased large quantities, the nature of their manufactory enabling them to make use of spoiled and inferior Scotch grain, such as the brewers could not use, and which, therefore, formerly brought a very low price, or, in fact, could hardly meet with any market. In this view, the private interests of the landed gentlemen, both in England and Scotland,
 were

succeeded by bringing *them* forward in the scene, there could not, indeed, have been a more convincing proof that the *public* rights of the country were, in their opinion, grossly injured, for they would, in that case, have acted in direct opposition to their own *private* interests.

Not satisfied with the heavy charge he had already brought against Scotland, of usurping and holding an *unnatural* trade with *impunity*, he goes on thus: "Scotland *claims* the benefit of the Union in her trade and commerce; but Scotland abuses that *privilege*. In all excisable commodities, the people of Scotland account it a sin to pay the duties charged by a British Parliament upon goods manufactured there."

In another part of the same performance, the following argument is maintained:—"The Scotch distiller, therefore, must have some advantage which the London distiller hath not. But it is not in the price, nor quality of the corn, which is scarce, dear, and poor, if grown in Scotland; and if it is imported, the price is advanced thereby. It cannot be in the price

were unquestionably promoted by the distillery of Scotland. But *particular private interests* are not the object of this paper.

“ of melasses, for the melasses for making spirits
 “ is chiefly imported into Scotland from London,
 “ and the price advanced thereon also. It can-
 “ not be in labour, rent, coals, or utensils, for
 “ the whole expence of making spirit in Eng-
 “ land (deducting the value of the refuse for
 “ feeding of hogs) doth not amount to more
 “ than 4l. 10s. per ton, being but 4½d. per
 “ gallon: and upon melasses spirit, it doth not
 “ amount to more than 1l. 11s. 6d. per ton, de-
 “ ducting the value of the refuse, which is 1½d.
 “ per gallon. Therefore if rent, coals, labour,
 “ and utensils were to be had in Scotland for
 “ nothing, yet Scotland could not contend with
 “ the distillers of London, to sell spirit in
 “ London at less price. But the expence of
 “ making spirit in Scotland, and sending it to
 “ London for sale, is much greater than upon
 “ spirit made in London. So that there is no
 “ advantage in favour of Scotland, neither in
 “ the materials from which spirit is made, nor
 “ in the expence of manufacturing. And there
 “ is but one other article of cost attending the
 “ making of spirit, which is the duty.”

The inference drawn from these facts will
 readily occur; but it is only necessary at present
 to observe, by the bye, that the distillers of Lon-
 don,

don, in possession of advantages which they describe as being decisively in their favour, could hardly complain if the distillers of both countries were placed under one and the same law, and such a law as neither of them could well evade.

This pamphlet *, absurd and inconsistent as it was, produced some effect ; but the authors of it did not stop there. They wrote memorials and petitions to the Lords of Treasury, in order that reprimands and instructions might be sent to the Board of Excise in Scotland, for suffering these smugglers to leave their own country.—Nay, they even made an attempt at legislation, and drew a long bill to be passed into a British Act of Parliament, lamenting that they were “under-
“fold even in *their own country*,” and containing many a melancholy *whereas* against Scotland.—But when they went on, and talked gravely of the good of *revenue*, the people smiled, and the bill was withdrawn.

They had, however, gained their point so far. Their own evasions and frauds (if they were guilty of any, and did not resist all the temptations

* It was well answered at the time by the agent for the Scotch distillers.

of their situation) were lost in the idea which they had raised of the vast extent of Scotch smuggling. The *Board of Excise* in Scotland, alarmed at the charges and accusations thrown out against them, felt their zeal for the public good rise, in proportion to their fears of dismissal, and did most certainly set a-going, at once, so many engines of vexation against these manufacturers, as for some time threw their business into utter confusion. Indeed the whole artillery of excise was brought to bear, and played most furiously upon them—troops of officers, armed with hydrometers *, were seen constantly

* The Board of Excise in Scotland had, by their practice, without law, anticipated the use of this instrument, afterwards recognised by legislature, and, in fact, had carried into condemnation large quantities of spirits by means of it. At length they received a check by a judgment of the Court of Exchequer, after which they did not venture to make seizures by virtue of the hydrometer, but still chose to indulge themselves in the use of it. It is almost unnecessary to observe, that neither the arbitrary introduction of such new weapons, nor the vexations and interruptions suffered under a never-ceasing survey of officers, who conducted themselves in the most wanton and tyrannical manner, would have been endured in England.

It is a fair question to ask, whether any part of the large sums taken from the Scotch distillers, by means of such condemnations, ever found its way into the public treasury?

relieving

relieving each other, commanding the workmen, and patrolling night and day in the works.

This was not the way to suppress fraud. If the Scotch distillers evaded duties when opportunities offered, nay, if they even set their ingenuity to work to devise means of evasion, the oppressive severities of their excise not only furnished a strong incentive, but also afforded them the best ground, if not to justify, at least to palliate their offence—absurd rigour will always be met by evasion.

At this time there existed a difference (besides the malt duty, which will be afterwards particularly mentioned) of eleven-pence two-thirds of a penny per gallon between the excise duties upon corn spirits in England, and those paid in Scotland.

This difference, which arose from an exemption in favour of Scotland, contained in the 16th and 24th of George II. was regularly paid by the Scotch distillers before they sent any spirits into England. The English would otherwise have had just reason to complain, and, indeed, the Scotch Board of Excise, of themselves, refused to give permits till that difference was paid.

To remove, by positive law, the difference of duty which had been thus, by the wisdom of
the

the Excise, and the acquiescence of the manufacturer, *equalized* (to use a phrase which has been adopted, and perhaps abused in Scotch distillery law), and with a view to put the whole united kingdom upon one footing, legislature interposed, and in 1784, made one general law *, repealing former duties upon spirits both in England and Scotland, and laying a lighter duty in lieu of them upon both countries.

By this law it was intended to put England and Scotland upon the same footing; and had the law been executed in the same manner in both countries, the intentions of the legislature would have been answered.

The use of the *Hydrometer*, which had been before authorised without law by the Board of Excise, was now, by this general act, introduced as the legal mode of trying the strength of spirits over the whole united kingdom; but the use of it became particularly dangerous to the Scots when they sent spirits into England, and produced a distinction of some importance to the London distillers. Whatever tended to obstruct the Scots in their way to the market of London, which the London distillers em-

* 24 Geo. III. c. 46.

phatically called *their own market*, was to them of importance.

The limitation of *strengths*, as particularly affecting the Scotch distillers under this law, was indeed fairly introduced in consequence of an adjustment, which it is material to state.

The malt duties in Scotland, on account of the inferiority of the grain, are very considerably lower than those of England. In this particular, therefore, the Scotch distillers had an advantage *when they malted English grain*; and at making the new law, it was reasonable to have that difference in view. Upon calculation, it was found by both parties, to amount to one-penny per gallon in the manufactory of corn spirits. The Scotch distillers had offered to pay an additional duty to that amount; and in the draft of the bill, a clause was inserted to that purpose. The London distillers had at the same time insisted for a restriction of the strengths of spirits; which was strenuously opposed by the Scots, because they foresaw that it would not only subject them to a very heavy additional charge, but expose them to much loss, and vexation in the execution. The London distillers, therefore, proposed to give up the additional duty of a penny per gallon offered by the Scots, and settled as an equiva-

equivalent for the difference on the malt duties, if the Scots would agree to the proposed restriction as to the strengths of their spirits; and so the matter was adjusted: the additional duty of one penny offered by the Scots was struck out, and the restrictions of strengths inserted in place of it—In consequence of which, although spirits from the Colonies and West-Indies were imported at all strengths, it became necessary for the Scots to reduce the strengths of their spirits at home by a great mixture of water, and thus to pay freight and charges for large quantities of water sent to England.

By this law, therefore, it was enacted, That no spirits should be sent out above one to ten over hydrometer proof, upon pain of a total forfeiture. It became, of course, a serious object for the Scotch distiller to take care that he sent no spirits to England of a higher strength, for he was sure of being detected if he did, and as sure of receiving no mercy if he was detected. He tried them carefully by his hydrometer, and then shipped them—a week, a fortnight, or perhaps a month elapsed before they reached their port of destination in England, where another hydrometer was produced by an English officer, and the trial was made a second time at landing them.

them. Upon the report of this officer, that by his hydrometer the strength was above the legal standard, the spirits were seized, and became liable to forfeiture.

In this manner the instrument is still used, with an allowance of only 3 per cent. for variations, and a regulation that *Clark's* hydrometer shall be the rule.

It is a difficult matter even for skilful hands to quadrature two hydrometers so as that they shall agree, and the instrument must unavoidably be affected by every material change in the atmosphere. Observe then the coincidence of extraordinary circumstances which must occur before the Scotch distiller can be safe, though innocent. The state of the atmosphere must be the same in England to-day, as it was in Scotland a fortnight ago.—The hydrometer used by the officer in England must be equally correct, or equally incorrect with that which was used by the distiller in Scotland.—The experiment must be made with equal accuracy, or equal inaccuracy by both—and a needy exciseman, without control, must discharge his duty with perfect honesty.

All these are circumstances so very extraordinary, that neither of them is to be looked for ;
and

and accordingly seizures* of Scotch spirits, to the amount of a great many thousand pounds, were in fact made under the abuse or variations of this instrument, soon after the law passed, and a great loss was incurred before they could be recovered by orders from the Lords of Treasury.

By the law now under consideration, which established the use of the hydrometer, a new rule was fixed for ascertaining the duties by an average of the quantity of spirits, which it was understood could be drawn from a certain quantity of fermented worts or wash. By the 4th of Queen Anne, *fifteen* gallons of spirits was the proportion then fixed; and notwithstanding the progress which the art of distillation had made, it was still held in law, that no more than that quantity could be drawn, at an average, from every hundred gallons of wash. According to that rule, the surveys were to be checked, and the duties levied; but the same law was very differently

* The first cargo of consequence which was sent up after the introduction, *by law*, of this instrument, was seized by virtue of it. The cargo belonged to Philip and Co. and to John Stein, and was worth about 12000*l*.—Another cargo of value, belonging to John Aitchison, was soon after seized by the same means, under circumstances of very peculiar hardship.

executed in the different parts of the united kingdom. In England, where the distiller drew more than the statutory proportion, which, of late years at least, has been universally done, he paid for no more than that proportion—the surplus, being the produce of his own art and ingenuity, was his own without duty or challenge. This certainly gave scope for evasion; but it encouraged ingenuity and improvement.

In Scotland, the Excise executed the law so strictly, that the officers had orders to seize every drop of spirits, which the skill of the manufacturer enabled him to draw beyond the statutory proportion settled in the days of Queen Anne. The Scotch Board of Excise presumed that the surplus over the *fifteen* gallons had been drawn from concealed or abstracted wash; thus presuming guilt, where the fact was perfectly consistent with innocence. Nay, they raised up a presumption against a known fact. They *knew* that much more was now drawn by means of improvement in the art of distillation; but they *presumed* that more was not drawn, and ascribed the surplus to fraud.

This obliged the Scotch distiller to draw off his spirits at the highest strengths possible, and afterwards reduce them by water.

By the law of 1784, now under consideration, the average quantity of spirits to be drawn from a hundred gallons of wash, was in future to be *twenty* gallons. According to that proportion duties were to be paid ; and it was declared, that whatever spirits should be found beyond that proportion were to be forfeited—A very singular enactment, under which it came to be against the interest of the manufacturer to improve his art. Whatever he might draw from his grain beyond what the law had deemed to be a reasonable quantity, was so much lost.

The London distillers were the persons who proposed, that *twenty* gallons should be fixed upon as the average proportion, because it was to be the rule observed in Scotland ; and they knew well that it would be observed strictly there, and liberally in England. Let this fact be attended to ; for by and by we shall find their conduct shift with their interest. When by a new law this proportion of their own proposing was not to affect Scotland, they complained of it as too high a rate of calculation, and were permitted to falsify their own statement by contrary assertions.

The Scotch distillers for some time laboured hard under this law ; and, notwithstanding the

various disadvantages arising from distance, and the wide distinctions which had been constantly adopted against them in the mode of executing the law, they sent great quantities of spirits to England. The clamour, therefore, against them, was most industriously revived, and they found the vexations and oppressions which they suffered under it altogether intolerable—their attention was distracted, and they were no longer sure of any thing.

In this situation they repeated a proposal, which they had made to the Minister at the formation of the general law in 1784, viz. that the plan of levying the duties by means of a *licence* upon entered stills, at so much per gallon of their contents, should be adopted over the whole united kingdom *.

Such a duty it would have been impossible to evade; but the London distillers were most violently against it—they did not give their reasons, nor was it necessary that they should.

The Scotch distillers had before proposed, as the next expedient, that one half of the duties should be raised by a general licence, and the other half in the usual way; but this plan had been also rejected by the London distillers, be-

* It is difficult to imagine what solid objections can be made to this, as the mode of levying the duties upon the distillery.

cause it would have deprived them of half the advantage they then enjoyed under the execution of the law.

The Scotch distillers, now goaded to the utmost, were determined to disprove, in a manner which should be unanswerable, the charge under which they laboured, viz. that their whole dependence was upon fraud, and, at the same time, to get rid of the despotism of their Board of Excise. With these views they suggested, and even solicited a new law, such as might draw a line across the united kingdom, and, so far as concerned one of its greatest manufactories, completely separate England from Scotland. They begged to have Scotland put under the *licence* duty, which they had before proposed for the whole united kingdom, while England, or rather the monopoly of London, should remain possessed of all the convenience of the old system, and every possible means of evasion.

This the London distillers did not oppose; and the law was brought forward.

Scotland was thus again to become a foreign country to England.—A *Scotch* and an *English* market were to be established by distinct systems of law, and the contending interests of each to be made the subject of a sort of commercial treaty for regulating the intercourse between them.

Not eighty years before, the Lords and the Commons of Scotland were deliberating upon the treaty of Union. The people at large, unable, perhaps, to comprehend, or unwilling to welcome the statesman's offering of future opulence and prosperity for the sacrifice of present dignity and privilege, were agitated with honest passions; they thought they saw the departing spirit of their country, and trembled for the independence of their posterity. Every article, every word, which it was supposed their children would read with veneration, as the charter of their public rights, was weighed with anxious care; as if words could guard from servility the independence of a people. The wisest men amongst them paused at the magnitude of the transaction—it was at length concluded, and the free and friendly participation of common rights, the reciprocal communication of benefits, the suppression, for ever, of all *distinctions*, by which influence might ruin industry, were the great principles of concord which every line repeated.

This happened in the year 1707.—In the year 1786 it was determined that such distinctions between the two countries should again take place.—This was determined, not at a great convention of the people, nor by the collective

wisdom of Great-Britain, but at a meeting for the settlement of private jealousies and disputes, between a few distillers of the capital, and some rival manufacturers of Scotland. *They* also deliberated upon articles, and they concluded a treaty. The treaty of Union did not, at that distance of time, obstruct their negotiations: no *private* interest offered to bring it forth from the archives of the state, where the parchment lay in safety; and it was conveniently forgotten.

Although by some it may be thought impertinent to the subject, we shall here beg leave to bring under view as matter of curiosity, the anxious expression of the following articles in that great public instrument.

Article 4th. "That all the subjects of the
 " united kingdom of Great-Britain shall, from
 " and after the Union, have *full freedom and in-*
 " *tercourse of trade* and navigation, to and from
 " any port or place within the said united king-
 " dom, and the dominions and plantations there-
 " unto belonging, and that there be a *communi-*
 " *cation of all other rights, privileges, and advan-*
 " *tages*, which do or may belong to the subjects
 " of either kingdom, except where it is other-
 " wise expressly agreed in these articles."

Article 6th. "That all parts of the united
 " kingdom

“ kingdom for ever, from and after the Union,
 “ shall have the same allowances, encourage-
 “ ments, and drawbacks, *and be under the same*
 “ *prohibitions, restrictions, and regulations of trade,*
 “ *and liable to the same customs and duties on import*
 “ *and export.*”

Article 7th. “ That all parts of the united
 “ kingdom be for ever, from and after the Union,
 “ liable to the *same excises* upon all exciseable
 “ liquors.”

Article 18th. “ That the laws concerning
 “ *regulation of trade, customs, and such excises* to
 “ which Scotland is, by virtue of this treaty, to
 “ be liable, be the same in Scotland, from and
 “ after the Union, as in England.”

By the same article, it is again anxiously pro-
 vided, that no distinction shall be suffered, upon
 any ground, even of evident utility, to take place
 between the two countries, in matters of public
 right. This is expressed in the following words :
 “ With this difference between the laws con-
 “ cerning *public right, policy, and civil government,*
 “ and those which concern private right, that the
 “ laws which concern *public right, policy, and civil*
 “ *government,* may be made the same throughout
 “ the whole united kingdom; but that no alter-
 “ ation be made in laws which concern private
 “ right,

“ right, except for evident utility of the subjects
“ within Scotland.”

This last exception the Scots would not admit in matters of *public right*, because they wisely thought, that no object of present utility could balance the *danger* of giving admission to superior power and influence in the affairs which respected their general interests, or which, in other words, respected their trade, manufactures, or public privileges*.

To

* In the debates of the Parliament of Scotland, upon the subject of the Union, Lord Belhaven, after describing the degradation of the peerage, and other circumstances which he thought mortifying to the country, proceeded thus: “ I think
“ I see the royal state of boroughs walking their desolate
“ streets, hanging down their heads under disappointments,
“ wormed out of all the branches of their old trade, uncertain
“ to what hand to turn, necessitated to become prentices to
“ their unkind neighbours, and yet, after all, finding their
“ trade so fortified by *companies*, and secured by prescriptions,
“ that they despair of any success.—I think I see the honest
“ industrious *tradesman*, loaded with new taxes and impositions,
“ disappointed of the equivalent, *petitioning for encouragement*
“ to his *manufactory*, and answered by counter petitions.—I think
“ I see the incurable difficulties of the landed men fettered
“ under the golden chain of *equivalent*, &c.”

It is not from any impressions against the Union that this is inserted.—It was, perhaps, a wise and a liberal measure in both countries,

To return to the negotiations of the distillers, in consequence of which it was agreed, that one system of law should govern the distillers in England, and another should regulate the same trade in Scotland. After getting over the general principle, it only remained to settle the terms of that bargain, by fixing, upon hypothetical calculations and statements, the rate of duty which should be levied upon Scotland by the complicated machinery of a licence, and an import duty united, so as that the Scotch manufacturer should come to the *London distiller's market* upon equal terms with himself. The parties had agreed perfectly upon the expediency of deviating from the public rights of their country,

countries, and much of the late improvement in Scotland has resulted from it ; but there are circumstances in the above, too striking to escape observation ; and it is difficult to say how soon the introduction of *distinctions* between the two countries might produce still greater evils than Lord Belhaven imagined. Two years have not elapsed since the first *direct* experiment of that dangerous policy. Let Scotland consider what she would be without some great manufactories to balance the great importation from England, and other quarters, but particularly from England ; and then judge of the possibility of supporting manufactories against the superior weight of England, if such distinctions are recognized.

but

but they differed in this matter of private interest; and the minister was made the umpire.

Here was a new task for a British minister. Two sets of manufacturers, one residing in England, and another in Scotland, agree that each shall be taxed upon a different system, and by a different rule, but that both must be upon an equal footing: the balance is put into the hands of the minister: in weighing the advantages of each, how is he to judge of their value? An embarrassing question---It must either be by skill in the manufactory, by the information of the parties interested, or by chance; and the difference of a mere trifle upon one side or the other may, in the course of an extensive business, be fatal to the party injured.—Skill, as a manufacturer, he cannot be supposed to possess, and the information of neither of the parties is to be relied on: he must then try an experiment, and from thence derive knowledge, at the expence of a great manufacture, or the ruin of individuals.

In this singular situation the minister, doubtless, made use of all that discernment and ability which he is known to possess. The rate of licence-duty to be laid upon the stills in Scotland, and of equalizing duty to be paid upon spirits
when

when sent into England at the port of arrival, so as to render the whole equal to the excise duties supposed to be paid by the distillers of London, were, if possible, to be ascertained upon some settled principles; but it was, at least, a very difficult undertaking.

The Scots were purchasing from government, and from the London distillers, permission to work, for a certain time, at a certain rate; and the difficulty was to fix the price, or to ascertain the comparative value of that portion of time. At length, however, the matter was settled. The agreements of the parties were guaranteed by the public. An annual licence-duty of 1*l.* 10*s.* per gallon of the contents of stills in Scotland, entered for the corn distillery, and 2*s.* of duty to be paid upon every gallon when imported into England, were finally settled as equal to the excise duties payable by the London distillers, upon the quantities of spirits they were supposed capable of manufacturing in the same space of time.—Thus the law passed.

But this new system was but an experiment; and therefore the endurance of the Act was limited to two years, from the 5th of July 1786. In other words, legislature declared to the public, that as the Act had passed upon hypothetical calculations,

culations, which might be found erroneous, it was not to be relied on as a law that would be continued beyond the term of two years.

The converse of the proposition was, that although the law proceeded upon hypothetical calculations, which might be found erroneous, yet, as it gave certain rights, by virtue of private agreement, and by force of public authority, these rights might be relied on for the full term of two years. This fully met the idea of public faith, and held forth a security which no private stipulation could afford.

The London distillers exulted. The Scots had now got themselves put under a new mixed species of duty, which it was impossible to evade; while they, the London distillers, enjoyed, under a separate excise law, passed at the same time for the kingdom of England, all the conveniencies and opportunities which had long attended their situation; with this farther improvement, that they were now only to be surveyed once in the course of three months, and to have the accommodation of twelve hours previous notice*.—Nothing could be more convenient.

The

* By the act passed in the year 1784, for the whole united kingdom, the officers were directed to take an account of the
stocks

The Scotch distillers, again, were happy in reflecting, that now they knew with certainty what their legal rights were for full two years, and for that time would have the entire command of their own operations, and modes of working. In short, that nobody could now blame them for being industrious, and that they run no risk by improving their art, of subjecting themselves to penalties and forfeitures. This was their idea of the act—it was the general idea.

They were too sanguine.—The Act of Parliament gave them additional credit: they began their operations with great alacrity; and as they knew it to be a favourite object with government, that they should, if possible, meet the

stocks of distillers, “once in every thirty days, at the least, “and oftener when occasion should require.”—The Scotch Board of Excise thought that occasion there required a perpetual survey of stocks; but the English Excise dealt not so hardly under the law. They were only *obliged* to do it once in thirty days, and it was therefore in their power to act with indulgence.—By the new law, now under consideration, the English distillers are only to be surveyed once in three months, “and oftener when occasion shall require.” And twelve hours notice is to be allowed them for the purpose, as the act expresses it, of filling up their ullage casks. Other purposes however can be served by it.

smuggler

smuggler in the market, with goods equal to what he imported, they built additional works at a great expence, and procured foreign workmen, with considerable difficulty, for the purpose of enabling them to make *gin*, such as should vie with the manufacture of Holland. They succeeded wonderfully; the spirits they made could not be distinguished from foreign, and they were ready to supplant the smuggler in the market of Scotland. They could hardly apprehend that any thing in the shape of public law would disappoint this great public object.

It was, therefore, with astonishment indeed, that they found the Board of Excise refused to give permits for the sale, or conveyance, from hand to hand, of the spirits thus brought, at such expence, to such perfection. This is a most material fact in the history of the manufactory, and has been the chief cause of miserable consequences, which form the subject of an action against the Board of Excise for damages.

Damages!—How are they to be ascertained? Buildings and machinery, erected at a vast expence for a particular purpose, and unfit for any other, rendered useless, pulled down, and sold for the materials*; immense quantities of highly

* Evidence before the House of Commons.

manufactured spirits thrown back upon the manufacturer ; his hopes completely disappointed ; a public improvement of great magnitude defeated and suppressed ; all the jealousies of the old trade in the English market renewed ; sums of many thousands squandered in an unsuccessful contest with wealthy monopolists ; new complaints of hardships which never had existence ; new negotiations with the great ; new parliamentary remedies ; new public principles ; all the miseries of bankruptcy and ruin.

But the Commissioners of Excise in Scotland are ministers of government, who have possessed themselves of a very eminent discretion in the application of those laws, in which the flow of modern enacting eloquence leaves ample scope for revenue construction, and which can seldom be expounded till they are executed.

The Scotch distillers, drove out of the new line they had been successfully prosecuting with the countenance of government, and the favour of the public, and pressed hard by so sudden a loss, were under the necessity of sending all the spirits they possibly could to the English market, in order to keep up their credit, with a view to future profit. They worked with a rapidity which had not before been practised ; but this
forced

forced expedition did not turn to their profit. It appeared *, that though they run off great quantities of worts, or wash, in their entered stills, it was of a thin, poor quality, and subjected them to the loss of utensils by burning, and the stoppage of their works in consequence of it ; yet by redoubled efforts to save themselves from ruin, they did certainly send great quantities of spirits to the London market. This astonished and irritated the London distillers. In the true spirit of monopoly, therefore, they formed and executed a scheme of oppression, by which they hoped speedily to accomplish the overthrow of their troublesome rivals.

The duties upon spirits had, by the last act, been raised 5l. 5s. per ton, which warranted a rise of price. But at one stroke, the London distillers lowered the price no less than 7l. per ton, and soon after 3l. more, a reduction, in all, of 15l. 5s. per ton †.—By and by they will be seen raising the prices with equal power and rapidity.

This

* Evidence taken before the House of Commons.

† This fact, and the motives ascribed to them, they have never offered to deny. It is, perhaps, hardly in the power of government altogether to prevent such stratagems; they form

This was doubly hard upon the Scots, as it followed so close after the great loss and disappointment they suffered under the power exercised by their Board of Excise—but it was in vain to struggle—the people of London had the command of the market, and they were obliged to submit, in hopes that their opponents might soon lose their relish for so costly a game.

They therefore went on, working at loss for a considerable time, till the London distillers did tire of the scheme, and found it necessary to adopt a new one. The minister had been induced to make the public a party in the competitions. The term of the separate law for Scotland had yet half a year to run ; but they thought it would only be necessary to deceive the minister into a belief, that he had been imposed upon *

form a material branch of those intrigues in trade, which unequal wealth and credit will always produce ; yet surely they ought to be discouraged—every day's experience gives fatal proofs of the danger they carry along with them to a commercial country.

* It cannot have escaped the observation of the public, that all the negotiations between the English and Scotch distillers have been a series of accusations. At one time the English accusing the Scotch manufacturer, at another the Scotch accusing the English, of having deceived the minister.—Such is the effect of partial systems upon narrow principles.

by the Scots, respecting the data upon which it proceeded—they had no doubt of obtaining an alteration of it by such management, even during its term. If they did, the ruin of the Scots was unavoidable, because their credit could not stand, and after the losses they had sustained, the least check of their credit would, of course, lay them prostrate at once.

The scheme evinced no small degree of confidence in their own address, for no common considerations could be supposed sufficient to authorize so uncommon, and so very strong a public measure. But it succeeded in every article with the most correct precision. It is worth while, therefore, to trace their proceedings with some attention.

In a memorial to the Lords of the Treasury, they described the great extent of their own monopoly—they said it was nearly equal to four-fifths of the whole distillery of Great-Britain—yet they said Scotland “had possession of the “London market.”

They complained loudly of the miserable low prices which the article brought, but said nothing of their having themselves reduced them.

They charged, not only the Scotch distillers with having asserted, that they could only work
off

off their stills six or seven times a week, but also the minister with having adopted that fallacious and uncertain circumstance, as the sole ground of his calculation, in fixing the rate of duty laid upon the Scots.

They petitioned the House of Commons for relief upon the same grounds. And upon these grounds an inquiry was instituted by that honourable House, witnesses examined, and counsel heard.

In a Committee of the whole House, Mr. *Joseph Benwell*, one of the London distillers, informed them, " that he *knew of no agreement* " made with the distillers of Scotland, previous " to the bringing in the act complained of ; " but that while the bill was in agitation, it was " declared by the distillers of Scotland, that they " could work their stills but once in twenty-four " hours, while it was at the same time contend- " ed, on the part of the London distillers, that " they, the Scotch distillers, could work six times " in twenty-four hours."

Upon this state of the fact, Mr. Benwell informed the Committee, that with two opposite declarations before the minister, each of them intitled to equal credit, the act nevertheless

proceeded, " on the declaration of the Scotch
" distillers."

This was singular, especially as he also gave in evidence, that " when a different mode of
" collection was to be adopted, it required but
" little practice in the distillery business to fore-
" fee, that a different mode of work would be
" adopted."

Again, he informed the Committee, that " the
" English distillers did declare the mode which
" the Scotch did pursue." And again he asserted, that nevertheless " the Scotch undoubtedly had
" credit given to their declarations."

Mr. *Benwell* was not examined upon oath, but assured the honourable Committee that they might trust to his information, for he spoke
" *upon honour.*"

But in this business there afterwards appeared an unfortunate mistake—for in some parts of Mr. Benwell's evidence he gave the Committee to understand, that he only drew, at an average, about eighteen gallons* of spirits from a hun-

* He stated 2s. 6d. as the duty upon each gallon, if twenty gallons were drawn, according to the statutory proportion; but, he said, he paid 2s. 9d. according to his average workings, which was saying that he drew only 18 gallons.

dred of wash.—Whereas the report of his stock for last year, procured by order of the House, though not presented till too late, made the average of his workings somewhat more than nineteen gallons—every gallon of difference made three halfpence of difference in the calculation.

Here it will be remembered, that twenty gallons of spirits, for every hundred of wash, was the proportion fixed by the act of 1784, and since continued by the act of 1786, upon the information of the London distillers themselves, as the proper average proportion for ascertaining the duty. How then they could now open up that matter, without repealing or amending that act ; or what sort of evidence on the part of the London distillers was sufficient to shew that they could not draw that proportion of spirits, in opposition to their own statement of it, formerly given in to legislature, and made the basis of an Act of Parliament, it is difficult to conceive.

The Scotch distillers, upon their part, have repeatedly said, that they must have been much misunderstood, if any declarations of theirs were interpreted into a renunciation of whatever future benefit they might derive from improved skill or extraordinary labour.

But it is not the personal conduct of parties, it is the principle of the thing; not what was asserted by the manufacturer, but what was assumed by the minister, which here forms the question; and certainly, if there was an assertion of the Scotch distillers, on the one hand, and an opposite assertion of the English distillers on the other, as Mr. Benwell told the Committee, upon his honour, was the case, the minister would never have received as evidence the assertion of one of the parties, and rejected that of the other.

Mr. Benwell has indeed said, that the minister did give credit to the Scots, and refuse it to the English; and that he made the assertion of the Scots the basis of his calculation—but in this he may have been mistaken, as he appears to have been respecting a more material point, and more within his own knowledge, viz. the average produce of his own workings.

Let this matter be viewed upon principle, and see how it stands.

It is a very obvious truth, that no condition or obligation can be lawful, or rational, if raised by implication, which would not be so if constituted by direct or positive covenant.

To suppose that the minister proceeded upon

the assertion of the Scotch distillers, with regard to the rate of working (taking it for granted that the assertion was as Mr. Benwell stated it), implies that he took them bound by a tacit condition or obligation, not to work with greater expedition, nor to avail themselves of future improvement.

If so, mark the consequence.—The legislature of a free, a cultivated, a commercial, and a manufacturing country, was made to address a set of manufacturers in these words: “ We have
 “ thought it proper to take notice of the compe-
 “ tition which has for some time been carried
 “ on between you and another set of manufac-
 “ turers in the same business, and being desirous
 “ to put an end to the disquietudes of rivalry,
 “ and to secure to both of you a state of rest and
 “ contentment in your respective situations, by
 “ directing you how to conduct your own af-
 “ fairs, we have made a law which leans upon
 “ the principle of your advancing no farther
 “ than the spot upon which you now stand; if
 “ you move one step, you shake the foundation
 “ of a system, raised upon the nicest balances
 “ and calculations; thus far only shall it be
 “ lawful for you to push your industry, to im-
 “ prove by your experience, to avail yourselves

“ of your skill and ingenuity—for two years to
 “ come your manufactory shall cease to be pro-
 “ gressive—the art you profess shall, for the good
 “ of revenue, be made stationary by statute.”

This is not overcharged; it would be the unavoidable result of such a transaction as the London distillers have ascribed to the minister—therefore it is incredible.

But it is an easier matter to say what the grounds of the law were not, than what they were; for the application of the London distillers succeeded. The business was brought forward in the privileged shape of a *money* bill, imposing an additional duty upon the Scotch manufacturers, during the time yet to run of the term of two years, which they thought had been secured to them by the act then subsisting. The minister was placed between the two parties. The Scots could only assert, and solemnly assure him, that they were unable to bear an additional duty, and that it would now be hard, on a sudden to oppress them with a charge they so little apprehended.—The distillers of the city spoke a more forcible language.—“ *We shall*
 “ be ruined—we, the great distillers of London,
 “ if these manufacturers of Scotland are thus
 “ permitted to go on.—At present we can afford
 “ to

“ to pay you a large sum annually, infinitely
 “ more than all the other manufacturers in the
 “ same branch put together, and if so, our own
 “ private gains or savings ought to be laid out
 “ of the question—besides, we are just at hand,
 “ and can from time to time inform you how
 “ the trade goes on—we can be of use upon
 “ many occasions—but if you decline taxing
 “ those intruders into *our market*, we shall be
 “ bankrupts, desperate bankrupts — we shall
 “ pay you nothing—you must lose your re-
 “ venue—what will become of the finances of
 “ the nation! The Scots will never pay you—
 “ they may make raw spirits—they may inun-
 “ date the country with whisky, but they are a
 “ poor, designing, crafty people, who will creep
 “ through every hole and cranny of the law,
 “ rather than pay duties to their country.”

If this, or any thing like it, was the minister's
 situation, what could he do?—It was indeed an
 embarrassing one—but such will ever occur
 when legislature has been once tempted by the
 artifices of private traders, covering their own
 partial and petty views under the general interests
 of trade, and misdirecting the best motives of
 public men, to deviate from the broad line of
 general principle. It is then that the worst and
 most

most intolerant species of monopoly begins. The minister of finance, the moment he stoops to take a part in the private contentions of rival manufacturers, is himself reduced to the level of an intriguing tradesman. He becomes interested in every struggle for the market, between the venders of every commodity in the kingdom, and discovers at last, after much mischief has been done, that upon all such occasions he was made the mere instrument of the prevailing party. Can any thing be conceived a more deadly weapon in the unequal conflict, between old established manufacturers, upon whom revenue has been long accustomed to lean, and those new men, who may venture to contend with them, than the instrument of *taxation*, even in the hands of a conscientious minister? From the moment its force is directed downwards to such objects, there is an end of that sort of independence which industry, to be successful, must possess. Monopolists, who command the seller of the gross material, and the purchaser of the manufacture, with an equal sway, the monopolists *of the capital*, of the greatest corporation in the world, accustomed to intrigue, and practised in the arts of negotiation, with wealth, with influence, and address, have
from

from that moment the power of misleading legislature, and crushing, by Act of Parliament, every aspiring trader who dares look into their market.—The most dangerous seeds of corruption may be thus disseminated over the country, and the rising interests of every manufacture made dependent, not upon the skill and industry of the manufacturer, but upon the information, impartiality, and integrity of the minister.

Is there not something in this which may found an influence still more perilous in this trading nation, than that which has long been said to pervade every department of the state? Is there not something in it which may render *manners* still more profligate than they are? Let the hand of labour be arrested by power—make industry insignificant—teach merit that encouragement must rest with influence—the spring of the mind is gone — Proclamations may issue against vice and immorality—Piety shall preach in vain—Idleness and despair will fly to vice, and every virtue be supplanted by servility.

In observing upon past, with a view to future laws, we must give scope to the impression of possible consequences, and from the difficulties and perils which may arise from radical error
in

in point of principle, even in matters of limited importance, to trace their pernicious influence over the general system of things.

The interference of government in the competition between these two rival sets of manufacturers was, with deference to legislative wisdom, a radical error. The establishment of so strong a distinction in trade and manufactures between England and Scotland,* which had now, for the greatest part of a century, been accustomed to view with a friendly liberality, the interests of each, as the interests of both; the establishment of this wide distinction in the very face of the treaty of union, upon the petty discontents of a set of city tradesmen, raised upon the presumption of incurable fraud in one party, and of innocence in the other, was at least an unfortunate deviation from general principle. We have seen one of its consequences in the situation of embarrassment, to which it reduced a minister, who is justly

* There is a distinct law for the *Highlands* of Scotland, the object of which is, to enable the Highlanders, upon certain terms, to distill the grain produced in that mountainous country, for their own use: but no invidious distinction is thereby introduced between the two countries of England and Scotland.

celebrated for the range of his knowledge, and the force of his talents.

In the circumstances which have been described, it was impossible to deduce any rule from the merits of the dispute, for deciding the point at issue: because, the parties flatly contradicted each other, and without personal knowledge and skill in the manufactory, the minister could not determine. We cannot, then, presume to say upon what ground the matter was determined; in point of fact we only know, that it was determined against the Scotch manufacturers: and it may further be said, that in all such disputes, it will occur as a point of prudence, to balance the consequences of the fall of either party, and to turn the scale against those whose fall may, for the present, least affect the revenue.

The Scotch distillers were now burdened with an additional duty of sixpence per gallon for the time to run of the term, which had before been granted them; and, to give an idea of the extent of this addition, it need only be mentioned, that, upon one of the London distilleries, it would have amounted to above 400 l. a week; or upwards of 20,000 l. a year.

By a clause in this new correctory money bill,

bill, the compounders and rectifiers were thrown loose from their subsisting contracts with the Scotch distillers, unless they chose to pay the additional duty ;—that is, the Scotch distillers were deprived of any certain reliance upon these contracts ; that clause also passed, and made part of the law.

The losses which these manufacturers had been suffering under all the various circumstances already described, rendered their credit too tender and fore to resist a blow. It was now found, that they could at any time be ruined by the alteration of a law, however far it might apparently secure them ; and that, consequently, they were not to be trusted. The smallest opening to suspicion, the merest speck upon the surface of mercantile credit, may be fatal ; and a man who has been rich, and might be rich again, if not interrupted, will, by a single blow, given at a critical period, be reduced to a state of irretrievable bankruptcy.

It was not, certainly, the additional duty of sixpence per gallon, great as that addition was, which ruined the Scotch distillers ;—but it was that addition unexpectedly laid on at a trying crisis in their situation, and in concurrence with other recent losses, which gave the fatal turn against them.—

them.—In hopes of retrieving all, they had for some time been floating upon the surface, and struggling against the tide of monopoly.

Their successful opponents had now no rivals to fear; and what was the consequence? An immediate rise of the price of spirits, to the amount of 3l. per ton. This was attended by a general fall in the price of barley.

These incidents ought not surely to pass without affording some advantage, by means of the reflections they produce. A new law is now in agitation, and every member of legislature will be beset by parties of rival manufacturers in the same line of business; each of them presenting offerings of future profit to revenue, and of destruction to his neighbour. Public avarice, were it to prevail in this commercial country, might be allured by such baits; but the sordid views of that pernicious vice are so absurdly hostile to its own ends, that we need not, it is to be hoped, entertain any fears of its prevalence in this enlightened age. The *permanent* good of revenue can never be promoted by that narrow policy which depresses industry in one quarter to raise it in another, or sets up to sale the natural advantages of local situation. If, then, upon the
present

present occasion two different systems shall be proposed for taxing the distillery of Great Britain, one of them split out into distinctions, founded upon the vain attempt of estimating with precision, and poising with perfect equality a variety of partial interests, held forth as objects of national importance, by persons who have every temptation to deceive, and, yet, upon whose information alone they must be considered; the other, a plain and general system, to operate uniformly, either by general license or general excise, as the wisdom of legislature shall determine; by which the same sort of duties shall be levied in the same manner upon the same manufacture, whether in England or in Scotland:—if two such different modes are proposed, upon what solid principle of policy, or of finance, can it be supposed that the former will now prevail?—Shall government think it wise to bring the exertions of industry to any other level than that which is formed of course, by suffering extravagant speculation to be corrected by its own failures, or the intolerant spirit of monopoly to be defeated by the free and judicious application of those common benefits which all are equally intitled to enjoy?—Shall ministers reduce themselves to the necessity of making
bargains,

bargains, as individuals, one day, and voiding them, as statesmen, the next?—In what civil code is this distinction to be found?—Shall the real or imputed duplicity of one man rob another of the security to which he trusted, or establish new and dangerous general distinctions, which may go down to posterity?—Shall the levees of the great be crowded with labourers and manufacturers, and wealthy indolence be suffered to solicit at court the aid of partial taxation against industry?—Shall the liberal eye of legislature look upon fraud as the growth of a particular soil, and *Scotland* be held unworthy of the same common laws and regulations which *England* enjoys, and which a treaty, not yet obsolete, entitles *Scotland* to demand?—Shall the course of a river again divide the trading interests of one united people, and fetters be rivetted upon men, because they live at a distance from the capital?

F I N I S.

